

REMARKS

This amendment is being filed in response to the final Office Action dated November 10, 2010. Claims 1-2, 9-14, 17, 18, 40-41, and 43-58 are pending in the present application, of which Claims 1 and 40 are independent claims. By this Amendment, Claims 1, 9, 40, 43, 54, and 58 are amended, and Claims 3 and 42 are canceled. These amendments are made without prejudice or disclaimer. No new matter has been added, and Applicant respectfully reserves the right to pursue the original and previously pending subject matter in a continuing application.

Reconsideration of the application in view of the amendments and following comments is respectfully requested.

CLAIM REJECTIONS – 35 U.S.C. § 112

Claims 51, 54, 55, and 58, are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Applicant respectfully submits that the usage of “material” in Claims 51 and 55 particularly points out and distinctly claims the recited subject matter. The term “material” is used in conjunction with “ratio” in the claims to recite a “material ratio.” The term “material ratio” is used in the specification in connection with wall coverage of the stent, as follows: “Intracranial Stent with even material distribution and wall coverage, creating needed vessel support. Material ratio is in the range of 12-16% depending on deployment diameter.” Para. [0090]. Applicant respectfully submits that “material ratio,” as used in the claim and in the industry, refers to the wall coverage provided by the stent. For example, a recitation of a material ratio of 12–16% means that for a total exterior surface area defined by the sidewall of the stent, the material of the stent constitutes between about 12–16 percent. The remaining surface area can be, for example, pores or other interstitial spaces. Applicant respectfully submits that the term “material ratio,” as used in the connection with stents and in Claims 51 and 55, is not indefinite.

Claims 54 and 58 were rejected because the claims were not clear regarding what was referred to by the term “thickness.” By this Amendment, Claims 54 and 58 have been amended

without prejudice or disclaimer. The claims now specifically recite “strut thickness,” and support for the amendments can be found at least at paragraph [0033].

Applicant respectfully submits that Claims 51, 54, 55, and 58 are in condition for allowance and respectfully requests the § 112 rejections of these claims to be withdrawn.

“No Special Techniques”

The Office Action stated twice that Applicant’s specification on page 12 “admits that no special techniques are required in the fabrication of the stent.” The Office Action then used that statement to support the proposition that there were no structural differences claimed. Applicant respectfully submits that this statement is a mischaracterization of the teaching and explanation of the language in the specification. Specifically, Applicant submits that the statement is a generalization that extends beyond the context and specific intent of the description in which the language was provided. In the specific section of the specification, Applicant discussed some of the alloys that can be used for stents. For example, Applicant discussed different considerations of surface textures and grain sizes in the alloys used.

The actual statement in the specification is as follows: “No special techniques are required in melting, casting, or working the alloy for fabricating the stent.” Para. [0062] (emphasis added). It is clear from the actual statement that the Applicant refers solely to the melting, casting, or working of the alloy, stating that no special techniques are required (even though several techniques are explained). However, this statement fails to extend to other structures or features of the stent that are developed in the fabrication process. Applicant made no “admission,” and in no way contends, that no special techniques are required in the fabrication of the stent; Applicant stated only that no special techniques are required in the melting, casting, or working the alloy for the stent. To the extent the sentence from paragraph [0062] is construed beyond referencing the melting, casting, or working the alloy, Applicant respectfully disagrees, and Applicant requests confirmation in the next official action that this sentence is not being construed beyond referencing melting, casting, or working the alloy.

CLAIM REJECTIONS – 35 U.S.C. § 103

Claims 1-3, 10, 12-14, 17, 18, and 51-53 are rejected under 35 U.S.C. § 103(a) over U.S. Pat. Appl. Pub. No. 2003/0181973 to Sahota (“Sahota”) in view of “A Hysteresis-Free Platinum Alloy Flexure Material for Improved Performance and Reliability of MEMS Devices” to Brazzle (“Brazzle”). Claims 9 and 54 are rejected under 35 U.S.C. § 103(a) over Sahota in view of Brazzle, as applied to Claim 1 above, and further in view of U.S. Pat. No. 6,767,360 to Alt, et al. (“Alt, et al.”) or U.S. Pat. No. 5,957,929 to Brenneman (“Brenneman”). Claim 11 is rejected under 35 U.S.C. § 103(a) over Sahota in view of Brazzle, as applied to Claim 10, further in view of U.S. Pat. Appl. Pub. No. 2004/0039438 to Alt (“Alt”). Claims 40-42, 44, 46-50, and 55-57 are rejected under 35 U.S.C. § 103(a) over Sahota in view of “The Resistance to Fatigue Crack Growth of the Platinum Metals” to Speidel (“Speidel”). Claims 43 and 58 are rejected under 35 U.S.C. § 103(a) over Sahota in view of Speidel, as applied to Claim 40, further in view of Alt, et al. or Brenneman. Claim 45 is rejected under 35 U.S.C. § 103(a) over Sahota in view of Speidel, as applied to Claim 44, further in view of Alt.

Amended Independent Claim 1

Applicant respectfully submits that the cited references, alone or in combination, fail to teach or suggest all the recitations of the amended independent claim. For example, amended independent Claim 1 now recites, in part, “the stent comprises a generally tubular structure having an exterior surface defined by a plurality of interconnected struts having a plurality of interstitial spaces therebetween, the stent having a sidewall thickness between about 0.0012 inches and 0.0028 inches; . . . and wherein the stent has is self-expandable, with a latticework of struts having a thickness and a configuration such that the stent expands with a force equal to or less than 4 atm and has a flexibility such that deflection of 1 mm from a neutral line occurs with less than 8 grams of force.” Applicant submits that the cited references, alone or in combination, fail to teach or suggest at least a stent having a sidewall thickness between about 0.0012 inches and 0.0028 inches, and wherein the stent is self-expandable and has a latticework of struts having a thickness and a configuration such that the stent expands with a force equal to or less than 4 atm and has a flexibility such that deflection of 1 mm from a neutral line occurs with less than 8 grams of force, as recited in amended Claim 1.

As explained in the present specification, “When the tubular stent 112 is fully expanded to its deployed diameter, the latticework of struts takes on a shape in which adjacent crests undergo wide separation, and portions of the struts take on a transverse, almost fully lateral orientation relative to the longitudinal axis of the stent. Such lateral orientation of a plurality of the struts enables each fully opened cell to contribute to the firm mechanical support offered by the stent in its fully deployed condition, to assure a rigid structure which is highly resistant to recoil of the vessel wall following stent deployment.” Para. [0046]. Applicant respectfully submits that the structure of the latticework, the sidewall thickness, and material properties of the stent and struts enable the stent to, for example, expand with a force equal to or less than 4 atm and have a flexibility that deflects 1 mm with less than 8 grams of force. Applicant submits that these features are not taught or suggested in the cited references.

Applicant respectfully submits that the cited references, alone or in combination, fail to teach or suggest all the recitations of amended independent Claim 1. Accordingly, Applicant respectfully requests withdrawal of the § 103 rejection of Claim 1.

Amended Independent Claim 40

Applicant respectfully submits that the cited references, alone or in combination, fail to teach or suggest all the recitations of amended independent Claim 40. For example, amended independent Claim 40 now recites, in part, “the stent comprises a generally tubular structure having an exterior surface defined by a plurality of interconnected struts having a plurality of interstitial spaces therebetween, the stent having a sidewall thickness between about 0.0012 inches and 0.0028 inches; . . . wherein the stent has is self-expandable, with a latticework of struts having a thickness and a configuration such that the stent expands with a force equal to or less than 4 atm and has a flexibility such that deflection of 1 mm from a neutral line occurs with less than 8 grams of force.”

Similar to the arguments set forth above with respect to Claim 1, Applicant submits that the cited references, alone or in combination, fail to teach or suggest at least a stent having a sidewall thickness between about 0.0012 inches and 0.0028 inches, and wherein the stent has is self-expandable and has a latticework of struts having a thickness and a configuration such that the stent expands with a force equal to or less than 4 atm and has a flexibility such that deflection of 1 mm from a neutral line occurs with less than 8 grams of force, as recited in amended Claim 40.

Accordingly, Applicant submits that the cited references fail to teach or suggest all the recitations of amended independent Claim 40, and Applicant respectfully requests withdrawal of the § 103 rejection of Claim 40.

Dependent Claims 2, 9-14, 17, 18, 41, and 43-58

Claims 2, 9-14, 17, 18, 41, and 43-58 depend from amended independent Claims 1 and 40, and Applicant submits these claims are in condition for allowance for at least the same reasons set forth above with respect to Claims 1 and 40, in addition to the patentable subject matter recited in each of these dependent claims. Accordingly, Applicant respectfully requests withdrawal of the rejections of these dependent claims.

CONCLUSION

In view of the foregoing comments, it is respectfully submitted that the present application is fully in condition for allowance, and that such action is earnestly solicited. If any questions remain, however, the Examiner is cordially invited to contact the undersigned attorney so that any such matters may be promptly resolved.

Applicants respectfully submit that the claims are in condition for allowance and have made a good faith effort to respond to the outstanding Office Action. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is cordially invited to contact Applicants' attorney, at the telephone number below, to resolve any such issues promptly.

Any remarks in support of patentability of one claim should not necessarily be imputed to any other claim, even if similar terminology is used. Any remarks referring to only a portion of a claim should not necessarily be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully reserve the right to traverse any of the Examiner's rejections or assertions, even if not discussed herein. Applicants respectfully reserve the right to challenge later whether any of the cited references are prior art. Although changes to the claims have been made, no acquiescence or estoppel is or should be implied thereby; such amendments are made only to expedite prosecution of the present application and are without prejudice to the presentation or assertion, in the future, of claims relating to the same or similar subject matter. Applicants reserve the right to contest later whether a proper reason exists to combine prior art references.

Application No.: 10/578,806
RCE and Response to OA dated 11-10-2010

Please charge any shortage in fees due in connection with the filing of this paper, including extension-of-time fees, to Deposit Account 502624 and please credit any excess fees to that deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

/James W. Hill, MD/

James W. Hill, MD
Registration No. 46,396

18191 Von Karman Ave., Suite 500
Irvine, CA 92612-7108
Phone: 949.851.0633 AAS:kcc
Facsimile: 949.851.9348
Date: May 9, 2011

**Please recognize our Customer No. 31824
as our correspondence address.**

DM_US 27849969-2.077567.0018